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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

GERARDO PENA,

Defendant and Appellant.

G051464

(Super. Ct. No. 08CF1995)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Vickie L. Hix, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Appeal dismissed as moot.

Martin Kassman, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

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In 2008, defendant Gerardo Pena pled guilty to one felony count of possession of methamphetamine. (Health & Saf. Code, § 11377, subd. (a).) He was placed on probation and ordered to complete a drug treatment program. He subsequently violated probation on a number of occasions, ultimately leading the trial court to sentence him to prison in 2009. In December 2014, defendant filed a petition to reduce his conviction to a misdemeanor pursuant to newly enacted Penal Code section 1170.18, subdivision (f). The court ordered the conviction reduced to a misdemeanor. It denied relief under Penal Code section 1170.18, subdivision (f), but granted relief under subdivision (a) of that same section. Defendant objected to being placed on misdemeanor parole, stating his parole from prison was set to expire on January 20, 2016, but that if he was placed on misdemeanor parole, on February 6, 2015, that parole would not end until February 6, 2016. The court rejected defendant's argument and placed him on one year of misdemeanor parole. Defendant appealed. Months after defendant filed his notice of appeal, the superior court made a new order deeming defendant's sentence and parole completed and his fines paid.

We appointed counsel to represent defendant on appeal. Counsel filed a brief which set forth the facts of the case. Counsel did not argue against the client, but advised the court no issues were found to argue on defendant's behalf. We have examined the record and found no arguable issue. (*People v. Wende* (1979) 25 Cal.3d 436.) Defendant was given 30 days to file written argument in defendant's own behalf. That period has passed, and we have received no communication from defendant.

We note there is an issue as to whether a defendant has the right to review pursuant to *Anders v. California* (1967) 386 U.S. 738, and *People v. Wende, supra*, 25 Cal.3d 436, from a postjudgment order after the defendant had an opportunity to appeal the original conviction. (See *People v. Serrano* (2012) 211 Cal.App.4th 496, 500 [“United States Supreme Court and the California Supreme Court have concluded that due process does not require *Anders/Wende* review other than in the first appeal of right

from a criminal conviction”].) We do not address this issue because the appeal in this matter is moot. The initial period of misdemeanor parole has expired and a reversal would not benefit defendant to any degree.

Because the appeal is moot, we also do not address the issue of whether the court had jurisdiction to alter defendant’s sentence after he filed his notice of appeal. (See *People v. Cunningham* (2001) 25 Cal.4th 926, 1044 [trial court generally loses jurisdiction once appeal has been filed, but court retains jurisdiction to correct an illegal sentence].)

The appeal is dismissed as moot.

MOORE, J.

WE CONCUR:

BEDSWORTH, ACTING P. J.

ARONSON, J.